

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2015

C O R A M

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

CRP(PD).No.1246 of 2015
and M.P.No.1 of 2015

1.J.Rani

2.P.Boopathy

..Petitioners

-Vs-

P.Sriramulu

..Respondent

Petition filed under Article 227 of the Constitution of India praying to set aside the order passed by the III Additional District and Sessions Judge, Thiruvallur at Poonamallee made in I.A.No.1 of 2015 in O.S.No.112 of 2010 dated 11.02.2015.

For petitioners : Mr.R.Manickavel

For respondent : Mr.R.Subramanian

ORDER

This Revision is filed challenging the order passed by the III Additional District and Sessions Judge, Thiruvallur at Poonamallee in I.A.No.1 of 2015 in O.S.No.112 of 2010 dated 11.02.2015.

2. The petitioners have instituted a suit against the respondent for partition claiming 2/3rd share in the suit property and for delivery

of possession. The plaintiffs filed I.A.No.1 of 2015 under Order 6 Rule 17 Code of Civil Procedure, seeking amendment of the plaint that the property is "situated within the limits of Ambattur Municipality" be deleted and the words "situated within the limits of Chennai Corporation" to be substituted.

3. The case of the petitioners is that when the suit is filed in the year 2010, the property was lying within the limit of Ambattur Municipality and after extension of Chennai Corporation area, the property comes within the Corporation of Chennai and also they want to divide the Schedule mentioned property. The application was opposed by the respondent stating that the application was filed at the belated stage and after commencement of the trial with a view to drag on the proceedings. The Trial court dismissed the petition in I.A.No.1 of 2015, against which, the present revision is filed.

4. Mr.R.Manickavel, learned counsel for the petitioners submitted that the amendment would not change the character and nature of the suit and it is necessary as per Section 16 of the Code of Civil Procedure.

5. On the other hand, Mr.S.Subramanian, learned counsel for the respondent submits that the application lacks bonafide and the amendment also has no relevance to decide the issue involved in the suit. It is further contended that the trial in the suit has commenced in the year 2012 and when the defendants wanted to mark the Will executed by the mother of the defendant, it was objected by the petitioners. However, the trial court rightly allowed the defendant to mark the will, which is also confirmed by this Court in C.R.P.No.4400 of 2013. The learned counsel further submitted that the amendment is not at all necessary in this case and this application was filed with an ulterior motive to drag on the proceedings.

6. It is settled law that the courts shall be liberal in considering the application for amendment to avoid multiplicity of proceedings and merits of the case cannot be gone into at that stage. Indisputably, when the suit was filed in the year 2010, the property was lying within the area of Ambattur Municipality and thereafter, it was included within the limits of Chennai Corporation. The petitioners only wanted to amend the description of the Schedule of the Property.

7. In my considered opinion, the amendment does not change the character and nature of the suit. The trial court dismissed the

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application on the only ground that it is filed at belated stage. Considering the nature of the suit and the prayer sought for in the amendment application, I cannot approve the reasons assigned by the trial court for rejecting the application.

8. In view of the above findings, the order passed in I.A.No.1 of 2015 in O.S.No.112 of 2010 dated 11.02.2015 is set aside. The Civil Revision Petition is allowed. No costs. Consequently, connected MP is closed.

24.03.2015

Index:Yes/No
Internet:Yes/No

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To
The III Additional District and Sessions Judge,
Thiruvallur at Poonamallee

CRP.PD.No.1246 of 2015